IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 181 of 2002
With
CIVIL APPLICATION No. 2966 of 2002
In
APPEAL FROM ORDER No. 181 of 2002
With
CIVIL APPLICATION No. 7957 of 2004
In
APPEAL FROM ORDER No. 181 of 2002
With
APPEAL FROM ORDER No. 182 of 2002
With
CIVIL APPLICATION No. 2967 of 2002
In
APPEAL FROM ORDER No. 182 of 2002
With
CIVIL APPLICATION No. 7958 of 2004
In
APPEAL FROM ORDER No. 182 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARTIK KIRITBHAI PATEL & OTHERS
Versus
HANSABEN D/O MULCHANDBHAI PATEL & ANOTHER

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Appearance :

APPEAL FROM ORDER No. 181 of 2002
MR HARIN P RAVAL for Appellants.
MR MITESH R AMIN for Respondents

APPEAL FROM ORDER No. 182 of 2002

MR HARIN P RAVAL for Appellants.
MR MITESH R AMIN for Respondent No.1-2

MR SHALIN MEHTA with MS JOLLY R PARIKH for Respondents 3-4

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/11/2006

COMMON ORAL JUDGMENT

1. Since the dispute involved in these two appeals pertain to the same suit property and since the facts are common, with the consent of parties, these appeals and the Civil Applications are disposed of by this common order.

2. By filing Appeal from Order No. 181 of 2002 under Order 43 Rule 1, the appellants, original defendants No. 1 to 7 have challenged the order dated 13.03.02 passed by

City Civil Judge, City Civil Court, Ahmedabad below Exh. No. 5/6 in Civil Suit No. 900 of 2001. The aforesaid suit is filed by Hansaben, who is daughter of Mulchandbhai Patel and wife of Hiralal D. Patel against the present appellants as well as against respondent No.2, Arvindbhai Mulchandbhai Patel, who is defendant No.8 in the aforesaid suit.

3. Appeal from Order No. 182 of 2002 is filed by defendants No. 1 to 7 [the same appellants of AO No.181/02] challenging the order dated 25.02.02 passed by City Civil Judge, City Civil Court, Ahmedabad below Exh. No. 5/6 in Civil Suit No. 5664 of 2000. The aforesaid suit is filed by Arvindbhai Mulchandbhai Patel and Siddharth Arvindbhai Patel against the present appellants as well as against Gitaben Arvind Patel and Monaben Arvindbhai Patel, respondents No.3 and 4 herein, who are defendants No.8 and 9 in the aforesaid suit.

4. In Civil Suit No. 900 of 2001, the case of the plaintiff is that there is a property situated in Vadaj area of the city of Ahmedabad, which is described in paragraph No. 1 of the plaint and the same stands in the name of defendant No.1, viz. Kartik Kiritbhai Patel. According to the plaintiff, initially one Mulchand

Trikamlal Patel was the owner of the aforesaid land. The said Mulchand Trikamlal Patel executed a will on 27.12.1979, which is a registered will. As per the will, the beneficiary of the property is defendant No.1, Kartik i.e. grandson of the said testator. It seems that in connection with the will, Arvindkumar Mulchand Patel instituted a suit against Kiritkumar Mulchand Patel and others in the Civil Court being Civil Suit No. 2695 of 1983 in which the parties entered into a settlement on 31.07.90 and in the said Civil Suit No. 2695 of 1983, a consent decree was passed by the trial Court on 31.07.90. As per the said consent terms, ownership of defendant No.1 Kartik of the disputed land was acknowledged by the parties to the suit but as per the consent terms as and when the suit land is put to sale by the said Kartik and/or in case the said land is acquired, out of the sale proceeds, proportionate amount for 1000 sq. yards land should be given to Arvindbhai Mulchandbhai Patel [plaintiff of C.S. No. 5664/00] and proportionate amount for 445.75 sq. yards should be given to Hansaben Mulchandbhai Patel [plaintiff of C.S. No. 900/01]. It is also the case of the plaintiff that the beneficiary under the will, Kartik, became a major on 29.01.93 and on his attaining the majority, the trustees have handed over the possession of the suit property to the said Kartik, who,

as stated earlier, is defendant No.1 in the present suit. It is the case of the plaintiff that the said defendant No.1 Kartik is not the sole owner of the land in question but defendant No.8 Arvindbhai is owner of 1000 sq. yards undivided share in the said land and the plaintiff Hansaben is owner of 445.75 sq. yds. undivided share in the said land. It is further the case of the plaintiff that defendant No. 1 [Kartik] had agreed to sell the said land by entering into an agreement to sale in favour of defendants No. 2 to 7 by agreement dated 25.11.1993 which was registered in the office of the Sub-Registrar. As per the said agreement, the defendant No.1 had agreed to sell the land in question at Rs.150/- per sq. yard and at that time, the defendant No.1 had paid Rs.66,862-50 to the plaintiff i.e. Hansaben on 20.6.1996 by way of cheque. It is further the case of the plaintiff that the plaintiff has recently come to know of defendant No.1 has entered into a new agreement to sell the land at a higher price and that the plaintiff came to know about the said fact when defendant No.1 gave public notice on 18.10.2000 in daily newspaper “Sandesh” for the purpose of title clearance to which the plaintiff objected by giving reply in the newspaper dated 24.10.2000. It is also the case of the plaintiff that in view of the Urban Land Ceiling Act which was prevailing at the relevant

time defendant No.1, after entering into Banakhat, has not taken further steps for selling the land but when the provisions of the Act was not made applicable the defendant No.1 wanted to sell away the land by charging high price. It is the case of the plaintiff that through in the agreement to sale, price of Rs.150/- per sq. yards is mentioned, in fact the land is being sold at Rs.12,000/- to Rs.15,000/- per sq. yard, but to keep the plaintiff in dark, the price in the agreement to sale is mentioned at Rs.150/- per sq. yds. According to plaintiff, without taking her consent, defendant No.1 cannot sell the land to defendants No. 2 to 7. On such averments, the aforesaid suit is filed for declaration and injunction.

5. In the said suit, the plaintiff also took out an application Exh. 5 for restraining the defendant No.1 from executing the sale deed on the basis of banakhat dated 25.11.1993 . It is also prayed that defendants No. 1 may be restrained from handing over the possession on the basis of such agreement to sale to the alleged purchasers, i.e. defendants No.2 to 7. Injunction was also pressed into service against alleged purchasers, defendants No. 2 to 7, to the effect that they may not put up any construction in the suit land. The aforesaid

suit as well as injunction application were resisted by defendants No. 1 to 7 on various grounds. It is the case of the aforesaid defendants that the suit is not bonafide and the same is filed with ulterior motive. It is the say of the said defendant that the suit, on the face of it, is time barred as the plaintiff had already taken money on the basis of valuation of the land at the rate of Rs.150/- per sq. yard and the said payment was made by cheque as referred to earlier which is part of the pleadings in the plaint. It is the case of the said defendants that a considerable amount was paid to the plaintiff to the extent of Rs.66,662-50 by way of cheque on 19.06.95 and the plaintiff having accepted the said amount has tried to knock out more money by filing this suit. It is the say of the defendants that simply because public notice is given, it cannot be presumed that defendant No.1 wanted to sell the land for the first time, but the intended sale is on the basis of the agreement to sale of 1993, on the basis of which share of the plaintiff was already paid, which, without any murmur or objection, was accepted by the plaintiff. On these and such other grounds, the said suit was resisted by the contesting defendants.

6. The learned trial Judge, after considering the

material and record, came to the conclusion that there is a prima facie case in favour of the plaintiff and that balance of convenience is also in favour of the plaintiff, and in that view of the matter, the learned trial Judge allowed the injunction application and the defendant No.1 is restrained, till the disposal of the suit from selling or transferring the suit property or alienating his interest therein in any manner. Defendants No. 2 to 6, 7/1 and 7/2 were also restrained from purchasing the suit property in pursuance of the suit agreement dated 25.11.1993. Defendants No. 1 to 6, 7/1 and 7/2 were also restrained from making any construction in any manner over the suit property either directly or indirectly during the pendency of the suit.

7. Being aggrieved by the aforesaid order passed by City Civil Judge, City Civil Court, Ahmedabad below Exh. No. 5/6 in Civil Suit No. 900 of 2001, original defendants No. 1 to 7 have preferred Appeal from Order No. 181 of 2002.

8. Similarly, so far as another suit being C.S. No. 5664 of 2000 is concerned, the same is filed by Arvindbhai Mulchandbhai Patel and his son Siddharth Arvindbhai Patel on the same grounds taken by the

plaintiff of Civil Suit No. 900 of 2001 to the effect that he has got 1000 sq. yards undivided share in the property and the defendants should be restrained from transferring or alienating the suit property. So far as the facts of this case is concerned, the plaintiffs were not paid any amount as like the earlier case. However, in this case, an amount of Rs.1,50,000/- was deposited in the City Civil Court on 10.10.2000. It seems that there is a matrimonial dispute going on between Arvindbhai and his wife and daughter, Gitaben and Monaben. The said Gitaben and Monaben are also claiming their share in the aforesaid amount and that is why the said amount is not paid to Arvindbhai, and is deposited in the trial Court. The learned trial Judge granted injunction similar to one granted in Civil Suit No. 900 of 2001, in this suit also.

9. Being aggrieved by the aforesaid order passed by City Civil Judge, City Civil Court, Ahmedabad below Exh. No. 5/6 in Civil Suit No. 5664 of 2000, original defendants No. 1 to 7 have preferred Appeal from Order No. 182 of 2002.

10. Since the points in issue are identical in both the matters, with the consent of parties, both the appeals are taken up for final hearing and are disposed of

accordingly by this common order.

11. Learned advocate Mr. Harin Raval appearing for the appellants vehemently submitted that the learned trial Judge, at the time of deciding both the Notice of Motions has not considered the relevant facts and circumstances of the case. It is submitted by Mr. Raval that in any case, eventhough specific points were taken, the learned trial Judge has not taken care to deal with the same in the impugned orders. It is submitted that the learned trial Judge has completely misread the consent terms and reading the consent terms, it nowhere provides that the plaintiff of the present suit have got any right to monitor the sale transaction in any manner or that the said transaction is required to be carried out in their presence. According to the learned advocate for the appellants, the only right which is given to the plaintiff in the consent terms is to receive amount for 1000 sq. yards of land so far as Civil Suit No. 5664 of 2000 is concerned and amount for 445.75 sq. yards of land so far as Civil Suit No. 900/01 is concerned, out of the total sale consideration.

12. It is further submitted that it is not in dispute that so far as the plaintiff of Civil Suit No. 900/01,

Hansaben, is concerned, she has already received Rs.66,862/- without any protest by way of cheque which was given to her as back as on 19.06.95. Therefore, filing of the suit in the year 2001, making a grievance about inadequacy of the sale price, is not maintainable at all, and such a plea therefore, is not a bonafide one. It is argued by Mr. Raval that at no point of time the said plaintiff has shown any willingness to pay back the aforesaid money. It is submitted that after pocketing the aforesaid amount, it is not at all open to the said plaintiff to take out the said proceedings which amounts to abuse of process of law. Mr. Raval further submitted that Mulchandbhai was the original owner of the property in question and due to love and affection to his grandson, Kartik, he bequeathed the said property by executing a will in his favour but since Kartik was minor, a trust was constituted. It is submitted that undisputedly, the property was self-acquired property, yet in order to put an end to the indecent family dispute, the Trustees appointed under the will had entered into settlement on 31st July 1990 and the said Kartik subsequently, when he became major, has ratified that action. It is submitted that inspite of the aforesaid fact, the plaintiff, with an ulterior and dishonest intention, has tried to take out proceedings

after proceedings. It is further submitted by Mr. Rawal that whether the price fixed in the Banakhat in 1993 is adequate or not is not an issue which the present plaintiff can take up as said Kartik being the sole owner, was entitled to deal with his own property in his own way. If the said Kartik has any objection or takes out any proceedings for inadequacy of the sale proceeds, that stands on a different footing. According to Mr. Raval, when the said Kartik has not challenged the inadequacy of the price, the plaintiffs have no right to challenge the same. It is submitted that the agreement to sale is of the year 1993 and the same has been executed bonafide and the agreement is registered. However, because of Urban Land Ceiling proceedings and other legal impediments as well as in view of the fact that some proceedings were taken out by some other persons, the sale deed could not be executed. However, if the said Kartik now wants to fulfill his obligation by executing a sale deed as per the agreement to sale, that would not give any right in favour of the present plaintiffs and the plaintiffs cannot ask Kartik that he must sell the land at a particular price. Mr. Rawal further submitted that legal proceedings are initiated by wife and daughter of Arvindbhai Mulchandbhai Patel being Civil Suit No. 5350 of 1993 and in the said suit

instituted against Arvindbhai the present appellant, Kartik and subsequent purchases have also been joined as party defendants. He further submitted that in that suit, the plaintiff have also got an injunction in their favour as according to the said plaintiffs whatever amount the said Arvindbhai receives, they are entitled to receive 50% share from the same. In the said suit initially interim injunction was granted, which was subject matter of Appeal from Order No. 259 of 2001 wherein the parties have filed a consent terms before the learned Single Judge of this Court by which the aforesaid two plaintiffs have agreed before the Court that they will withdraw all their claims against the present defendants. Learned advocate Mr. Raval submitted that considerable amount was paid to the said two plaintiffs, Gitaben and Monaben and on that basis they have given up their rights. The aforesaid consent terms and the order passed by the learned Single Judge thereon is already on the record of these appeals.

13. Mr. Rawal, therefore, submitted that in view of the aforesaid facts and circumstances of the case, the injunction granted by the trial Court is required to be vacated as the trial Court has committed an error of law in not considering the relevant material on record and

has failed to exercise his discretion in a proper manner.

14. Mr. Raval further submitted that a suit cannot be filed for interpreting the consent decree as under section 47, CPC, any disputes arising out of a decree can be agitated before the executing court, and not by filing a separate suit.

15. Learned advocate Mr. Amin, who is appearing for both the plaintiffs of the aforesaid suits submitted that so far as the question of limitation is concerned, since in one of the suits, i.e. C.S. No. 5664/00 filed by Arvindbhai and Siddharth, the amount is deposited in the Court in October 2000, limitation can be said to have been started from the aforesaid date, and, therefore, the suit filed by the said Arvindbhai can be said to have been filed within time. So far as the suit filed by Hansaben, i.e. C.S. No. 900/01, it is submitted by him that he is not in a position to submit anything in connection with the limitation as his client has already received the amount in the year 1995. He further submitted that since the aforesaid amount was not adequate, the present suit is filed.

16. Regarding consent terms, it is submitted by Mr. Amin

that it is true that as per the consent terms, the said plaintiffs are given right to get monetary benefit out of total consideration but he submitted that the said plaintiff, in order to find out whether the sale price is adequate or not, can monitor the sale transaction. He submitted that though he has tried his best to see that the dispute is settled, unfortunately, his client, i.e. the original plaintiff, is not co-operating with him. Ofcourse, this Court is not concerned with this aspect while deciding this Appeal from Order.

17. So far as the suit filed by Arvindbhai is concerned [C.S. No. 5664/00] wife and daughter of the said Arvindbhai have made an application for joining them as party-defendants and they are joined as defendants No. 8 and 9 in the said suit. The said defendants have also appeared in the Appeal from Order filed by the original defendants of C.S. No. 5664 of 2000, and Mr.Shalin Mehta, learned advocate appeared for the aforesaid two defendants. Mr. Shalin Mehta has frankly admitted that his clients have accepted money for settling the dispute. He further submitted that his clients are interested only to see that the said Arvindbhai may not settle the dispute and pocket the entire amount and therefore, his clients are interested in monitoring the said

proceedings, and, therefore, they have joined themselves as defendants No. 8 and 9. Mr. Mehta further submitted that he cannot make any submissions on merits. However, after the arguments were concluded, the original defendant No.9 Monaben requested the Court to allow her to address the Court personally as it is submitted by her that she wants to relieve her advocate Mr. Mehta. However, since Mr. Mehta has concluded his arguments and the matter is fully heard, it would not be just and proper to allow the said lady to address the court now. The said request is, therefore, rejected.

18. I have considered the arguments advanced on behalf of the parties in great detail. I have also gone through the voluminous documents produced by the parties. In my view, the trial Court has committed an obvious error in not considering the case from its proper angle.

19. As regards the submission of Mr. Rawal that a suit cannot be filed for interpreting the consent decree, it is required to be mentioned that in Civil Suit No. 2695 of 1983, a consent decree was passed according to which out of the sale proceeds, proportionate amount regarding 1000 sq. yards of land is to be given to Arvindbhai Mulchandbhai Patel [plaintiff of C.S. No. 5664/00 – AO

No. 182/02] and proportionate amount for 445.75 sq. yards is to be given to Hansaben Mulchandbhai Patel [plaintiff of C.S. No. 900/01 – AO No. 181/02]. The consent terms nowhere provides that the plaintiffs of the present proceedings have got any right in the matter of fixing the sale consideration in any manner. The consent decree nowhere provides that unless the plaintiffs give consent, sale deed cannot be executed. The impugned order passed by learned trial Judge that the sale deed should be taken out in the presence of the present plaintiffs is, therefore, dehorse the consent decree passed by the Court. In a subsequently instituted suit, the Court cannot go behind the decree passed in the earlier suit. The only right which is given to the plaintiff is to recover the amount out of the sale consideration qua 1000 sq. yards and 445.75 sq. yards as stated hereinabove. It cannot be said that they are co-owners of the land along with Kartik. It was only monetary claim to which the said plaintiffs were entitled to receive.

20. Apart from the aforesaid aspect, at this stage, the conduct of the plaintiff is also required to be taken into consideration. It is not in dispute that Hansaben, the plaintiffs of CS No. 900/01 has accepted an amount of

Rs.66,862-50 as back as in the year 1995. The said amount was paid by way of cheque by the defendant No.1 Kartik to the said plaintiff. Not only that, it is an admitted fact that she gave a declaration to the effect that the agreement to sale dated 25.11.1993 entered into between Kartik and Purshottam Pragjibhai and others is binding to her and that she has also received Rs.66,862-50 by way of cheque. The said declaration is on record at Mark 16/1, After having accepted the amount, Hansaben has filed the suit in the year 2001 only with an object to extract more money. The said plaintiff has not even tried to pay back the amount before instituting the suit. After pocketing such amount and having remained silent for more than six years, the suit is filed in the year 2001. In that view of the matter, prima facie the suit is time barred and after accepting the money which was given to the plaintiff in the year 1995, the suit is filed in the year 2001. Simply for the purpose of executing the sale deed if a public notice is given that will not give any fresh cause of action to file the suit. Learned advocate Mr. Amin is unable to say anything with regard to the delay. The learned trial Judge has not taken care of the aforesaid aspect of the matter in the impugned order. Even otherwise, after accepting the amount and after giving declaration, it is not expected from the

said plaintiff to institute legal proceedings after six years of acceptance of the amount. Moreover, reading the consent terms, the only right which is given to the said plaintiffs is to receive particular amount from the sale transaction which the said Kartik may enter into, and from whatever amount the said Kartik may get, proportionate amount for 1000 sq. yards of land is to be given to Arvindbhai and proportionate amount for 445.75 sq. yds is to be given to Hansaben. Looking to the consent terms, it cannot be said that the said plaintiffs are treated as co-owners of the land so that their consent is required for selling the property. The observations of the trial Court in the impugned order is, therefore, dehorse the consent terms.

21. In any case, for interpreting the consent terms, a subsequent civil suit cannot be filed. It was open to the plaintiff to file an execution proceedings, which can be dealt with under Order 47 of CPC. The learned trial Judge therefore has not considered the scope of prima case in proper prospective as well as in the background of the case and the documentary evidence on record. That apart, even on the question of balance of convenience, the trial Court has committed an error. It is required to be noted that at the most the claim of the plaintiff

is monetary claim as they have no share in the land, except monetary claim from the sale transaction. It is rightly pointed out by Mr. Raval that in case the plaintiffs of both these suits ultimately succeed by proving that the said Kartik has sold away or transferred the land by undervaluing the suit property, by leading appropriate evidence that the land should have been sold at a particular price by examining expert witness in this behalf, and if the trial Court comes to a conclusion that the transaction was undervalued and the correct value of the land was withheld with an oblique motive, and if any decree is passed fixing a particular price in connection with the transaction of sale, his clients shall abide by the same subject to their right of appeal, and whatever amount payable as per the decree, his client may pay the same subject ofcourse to his clients right to challenge the decree. It is submitted by Mr. Rawal that in case any such decree is passed, the plaintiff can execute such decree which will be a decree only for getting monetary compensation. It is further submitted that it is not a case wherein his clients are required to be restrained from developing the land in question. It is submitted that in case the suit is dismissed, his clients will suffer irreparable loss as they will not be able to develop the property during the pendency of the suit. It

is submitted that, therefore, balance of convenience is also in favour of the defendants. It is submitted that therefore, the learned trial Judge has not considered this aspect in a proper manner especially when even as per the say of the plaintiffs, they are entitled to receive some more amount only, and, therefore, the dispute is only regarding the quantum of amount. It is submitted that if ultimately the Court comes to the conclusion that the property was worth a particular amount and that on that basis if a decree is passed, naturally the plaintiff can recover the said amount and it cannot be said that the plaintiffs are co-owners of the land and unless they give consent, the property cannot be sold.

22. In my view, considering the aforesaid aspects, the learned trial Judge has completely erred in not examining the case from this angle. The learned trial Judge has failed to consider the fact that C.S. No. 900 of 2001 filed by Hansaben is primafacie time barred. So far as the suit of Arvindbhai Mulchandbhai Patel is concerned, he is a party to the consent decree and the said plaintiff is now trying to back out from the same. The said plaintiff very well knew that at the most his right is only to get monetary compensation qua 1000 sq. yards

of land and not beyond that. The suit is filed after a considerable period and as stated above, simply because the defendant No.1 gave public notice inviting objections before entering into the sale deed, it cannot be said that any cause of action is available to the said plaintiff for bringing the suit within limitation period. As stated above, in case the suit is decreed, the plaintiff can recover their money claim as they have no right in the land in question nor their consent is required for executing the sale deed and the plaintiffs are given right only to receive a particular amount out of the sale consideration i.e. proportionate amount for 1000 sq. yards of land is to Arvindbhai and 445.75 sq. yds of land to Hansaben. Considering the aforesaid aspect of the matter, in my view, the injunction granted by the trial Court below Exh. No. 5/6 in Civil Suit No. 900 of 2001 and below Exh. No. 5/6 in Civil Suit No. 5664 of 2000 is required to set aside. Both the injunction applications given by the plaintiffs accordingly stand dismissed.

23. At this stage, learned advocate Mr. Harin Raval appearing for the original defendants No. 1 to 7 submitted that whatever may be the decree passed by the trial Court, his client shall satisfy the same subject to

their right to challenge it. He further submitted that his client will furnish solvent surety in the trial Court in this behalf to see that in case the suits are decreed, the plaintiffs may not have any apprehension that the same may become infructuous or that the defendant may fail to satisfy such decree. Mr. Rawal submitted that in both the suits, solvent surety will be given by his client within a period of four weeks from today to the tune of Rs.50 lakhs in C.S. No. 5664 of 2000 filed by Arvindbhai where according to him he is entitled to get price of 1000 sq. yards of land, and solvent surety for Rs.25 lakhs so far C.S. No. 900 of 2001 filed by Hansaben where the claim is to get share of 445.75 sq. mtrs. of land. Mr. Rawal further submitted that by giving such surety, it should not mean that there is a prima face case in favour of the plaintiff especially when the said Hansaben has accepted large amount and her conduct is such that no injunction can be given at all. However, since the suits are pending, the said defendants are directed to give solvent surety of Rs.50 lakhs and Rs.25 lakhs in C.S. No. 5664 of 2000 and C.S. No. 900 of 2001 respectively within four weeks from today, in the City Civil Court, Ahmedabad where the aforesaid suits are pending.

24. It is clarified that the observations made by the trial Judge in the impugned order as well as the observations made by this Court in this order are tentative in nature and meant only for the purpose of deciding the interim application and the present appeals; the trial Court shall hear and dispose of the suit on its own merits as per evidence on record without being influenced by the observations therein.

25. It is pointed out to the Court by Mr. Shalin Mehta that Civil Suit No. 5350 of 1993 filed by his clients, Gitaben and Monaben against Arvindbhai, husband and father of the plaintiffs respectively, is ordered to be consolidated with C.S. No. 5664 of 2000 filed by the said Arvindbhai. If the said suits are not consolidated, the trial Court will consider whether Civil Suits No. 5350 of 1993 and 5664 of 2000 are required to be consolidated and may also consider whether C.S. No. 900 of 2001 is also required to be consolidated with the above suits and heard together. Considering the fact that an unfortunate family dispute is going on, the learned trial Judge is requested to decide all the three suits as expeditiously as possible, and if possible, by April 2007. It is clarified that so far as C.S. No. 5350/93 filed by Gitaben and Monaben is concerned, rights of the

plaintiffs is required to be decided independently in the said suit filed by them as ultimately they are claiming their right regarding monetary claim against Arvindbhai, who is husband of Gitaben and father of Monaben. Learned trial Judge may accordingly dispose of all the suits expeditiously, and if possible, by the aforesaid date, in accordance with law. The Appeal from Orders are accordingly allowed, subject to the observations made hereinabove regarding furnishing solvent surety by the original defendants No. 1 to 7.

25. In view of the above order passed in the main appeals, the Civil Applications does not survive, and the Civil Applications stand disposed of accordingly. Rule/Notice, wherever issued, is discharged. Ad-interim relief granted stands vacated forthwith.

[P. B. MAJMUDAR, J.]

mathew